IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	ALEXANDER et al.	:	Confirmation Number:	5454
Application No.:	10/002,948	:	Group Art Unit:	3694
Filed:	October 18, 2001	:	Examiner:	I Jung LIU

For: METHOD AND SYSTEM FOR LEASING MOTOR VEHICLES TO CREDIT CHALLENGED CONSUMERS

APPEAL BRIEF

MAIL STOP APPEAL BRIEF-PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This Appeal Brief is being filed within two months from the Notice of Appeal submitted October 8, 2008 pursuant to 37 C.F.R. §41.37(a). This Appeal Brief is being submitted in response to a Final Office Action dated July 10, 2008.

Appellant hereby authorizes the Appeal Fee of $270.00 and any other charges necessary for consideration of this appeal to be charged to Deposit Account No. 50-1059. An accompanying Fee Transmittal is provided with this Appeal Brief authorizing the charge of the above fees to Deposit Account No. 50-1059.

1. *REAL PARTIES IN INTEREST*

The real parties in interest are the Inventors: Blaise ALEXANDER, Joan M. FALLS, Les PUGLIA and Matthew YEAGER.

2. *RELATED APPEALS AND INTERFERENCES*

Appellants and Appellant's legal representative do not know of any other prior and pending appeals, interferences or judicial proceedings which may be related to, directly affect or be directly affected by or have a bearing on the Board of Patent Appeals and Interference's decision in this pending appeal.

3. *STATUS OF CLAIMS*

Claims 1 and 3-27 have been rejected. Claims 2 and 28-31 are cancelled. Claims 1 and 3-27 are being appealed. A clean copy of the appealed claims (claims 1 and 3-27) is attached hereto in the Claims Appendix.

4. *STATUS OF AMENDMENTS*

A Response to Final Rejection was filed October 8, 2008 without claim amendments. All amendments to the claims were filed in a Response to Office Action before final rejection, so all claim amendments have been entered.

5. *SUMMARY OF CLAIMED SUBJECT MATTER*

There are two remaining independent claims, claims 1 and 19. Independent claim 28 was cancelled during prosecution. There are no dependent claims that recite a "means plus function" limitation.

Independent claim 1 recites a method for leasing a motor vehicle to a credit challenged customer (see e.g., Specification at p. 4: 4-5, Par. [0016]) comprising the steps of: selecting a vehicle based on predetermined financial criteria (*see e.g.*, Specification at p. 6: 1-31, Par. [0021] – [0025]); approving a lease for the vehicle (*see e.g.*, Specification at p. 9: 3-8, Par. [00387]); funding the lease (*see e.g.*, Specification at p. 10: 6-8, Par. [0041]); wherein funding the lease comprises: establishing a leasing company by an auto dealership (*see e.g.*, Specification at p. 3: 8-9, Par. [0016]); acquiring a line of credit from a lending institution by the leasing company for providing a pool of funds for a plurality of leases, the line of credit including an interest based upon a plurality of credit parameters associated with the dealership (*see e.g.*, Specification at p. 3: 9-23, Par. [0017]); selecting and installing into the vehicle

a device configured to render the vehicle operable for a predetermined period of time, the vehicle otherwise being inoperable with the installed device (*see e.g.*, Specification at p. 10: 23-27, Par. [0044] and p. 11: 1-6, Par. [0045]); activating the device to render the vehicle operable for a predetermined lease period after receiving a predetermined lease payment from the customer for the predetermined lease period (*see e.g.*, Specification at p. 11: 7-15, Par. [0046]); and delivering the vehicle to the customer (*see e.g.*, Specification at p. 9: 19-26, Par. [0040]) .

Independent claim 19 recites a system for leasing a motor vehicle to a credit challenged consumer (see e.g., Specification at p. 4: 4-5, Par. [0016]) comprising a device configured to render the vehicle operable for a predetermined period of time, the vehicle otherwise being inoperable with the installed device (*see e.g.*, Specification at p. 10: 23-27, Par. [0044] and p. 11: 1-6, Par. [0045]); means for obtaining a funded lease for the vehicle, the means for obtaining being configured to compute at least one predetermined financial parameter in electronic form based on at least one financial parameter associated with the consumer (see e.g., Specification at p. 9: 6-18, Par. [0038] - [0039]; FIG. 1); and a means for activating the device upon payment of a predetermined lease amount (see e.g., Specification at p. 11-12: Par. [0045]-[0052]).

6. *GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL*

Ground 1. Whether claims 1, 8, 10-12, and 18-19 are unpatentable under 35 U.S.C. 103(a) over Robyn (PTO 892 Form U) in view of Official Notice.

Ground 2. Whether claims 3-7, 9 and 20 are unpatentable under 35 U.S.C. 103(a) over Robyn (PTO 892 Form U) in view of Official Notice.

Ground 3. Whether claims 21-22 and 25-26 are unpatentable under 35 U.S.C. 103(a) over Robyn (PTO 892 Form U) in view of Official Notice.

Ground 4. Whether claims 13-16 are unpatentable under 35 U.S.C. 103(a) over Robyn (PTO 892 Form U) in view of Official Notice, and further in view of Simon *et al.* (U.S. Patent No. 6,195,648).

Ground 5. Whether claims 17 and 23 are unpatentable under 35 U.S.C. 103(a) over Robyn (PTO 892 Form U) in view of Official Notice, and further in view of Donald Streit *et al.* (European Patent No. 762363 A1).

Ground 6. Whether claims 24 and 27 are unpatentable under 35 U.S.C. 103(a) over Robyn (PTO 892 Form U) in view of in view of Official Notice, and further in view of Simon *et al.* (U.S. Patent No. 6,195,648).

Ground 7. Whether claim 7 is unpatentable under 35 U.S.C. 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "currently published retail value" in claim 7 is vague and indefinite, it is unclear whether the device has to actually perform upon activation of rendering the vehicle operable for a predetermined period of time, the vehicle otherwise being inoperable with the installed device or not.

7. *ARGUMENT*

Ground 1. Whether claims 1, 8, 10-12, and 18-19 are unpatentable under 35 U.S.C. 103(a) over Robyn (PTO 892 Form U) in view of Official Notice.

Claims 1, 8, 10-12 and 18-19

Claims 1, 8, 10-12 and 18-19, which rise or fall together, are believed to be distinguishable from Robyn (PTO 892 Form U), hereinafter referred to as "Robyn", and Official Notice.

The Manual of Patent Examining Procedure, 8th Ed., Rev. 6, (MPEP) Section 2141 sets forth the requirements that must be shown in order to first establish a prima facie case of obviousness:

> " The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in KSR noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting In re Kahn, 441 F.3d 977,

> 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that "'[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.'" KSR, 550 U.S. at ___, 82 USPQ2d at 1396. Exemplary rationales that may support a conclusion of obviousness include:
>
> (A) Combining prior art elements according to known methods to yield predictable results;
>
> (B) Simple substitution of one known element for another to obtain predictable results;
>
> (C) Use of known technique to improve similar devices (methods, or products) in the same way;
>
> (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
>
> (E) "Obvious to try" - choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
>
> (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art;
>
> (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. See MPEP § 2143 for a discussion of the rationales listed above along with examples illustrating how the cited rationales may be used to support a finding of obviousness. See also MPEP § 2144 - § 2144.09 for additional guidance regarding support for obviousness determinations. "

In determining obviousness, MPEP 706.02(j) requires (a) a statement of the relevant teachings of the prior art relied upon, preferably with reference to the relevant column or page number(s) and line number(s) where appropriate, (b) a statement of the differences in the claim over the applied references; (c) the proposed modifications to the art reference to arrive at the claimed subject matter; and (d) an explanation why one of ordinary skill in the art at the time the invention was made would have been motivated to make the proposed modification.

"[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." In re Kahn, 441 F.3d 977, 988 (Fed. Cir. 2006).

Furthermore, "[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art." See MPEP, Section 2143.01.

Robyn, as understood, is a New York Times article that provides an anecdotal recount of one auto dealer's program for leasing used cars to "poor people with no credit or bad credit", or "to anyone who can come up with at least $50 a week" (Robyn, 4-5). Customers must pay up weekly to get a code they can punch into a device attached to the dashboard or the car stays parked. Car buyers who qualify for bank loans can borrow at about nine percent, and the dealer charges more than twice that on comparable leases to customers with the coded device. (Id., 1-2). Various customers are quoted in the Robyn article expressing their satisfaction or dissatisfaction with the leasing program. (See, e.g., 13- 23).

The Examiner correctly indicates that Robyn does not teach: establishing a leasing company by an auto dealership; acquiring a line of credit from a lending institution by the leasing company for providing a pool of funds for a plurality of leases, the line of credit including an interest based upon a plurality of credit parameters associated with the dealership. Then Official Notice is taken that establishing a leasing company and acquiring a line of credit, the line of credit including an interest is old and well known in the business of leasing as a convenient way for company to provide customer integrated service in a timely and efficient manner. The Examiner states that it would have been obvious to one of the ordinary skill of the art at the time of the invention to have included establishing a leasing company by an auto dealership; acquiring a line of credit from a lending institution by the leasing company for providing a pool of funds for a plurality of leases, the line of credit including an interest based upon a plurality of credit parameters associated with the dealership to leasing a motor vehicle.

> "Official notice without documentary evidence to support an examiner's conclusion is permissible only in some circumstances. While "Official Notice" may be relied on, these circumstances should be rare when an application is under final rejection or action under 37 CFR 1.113. Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. As noted by the

court in In re Ahlert, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), the notice of facts beyond the record which may be taken by the examiner must be "capable of such instant and unquestionable demonstration as to defy dispute" . . . Furthermore, it might not be unreasonable for the examiner in a first Office action to take Official Notice of facts by asserting that certain limitations in a dependent claim are old and well known expedients in the art without the support of documentary evidence provided the facts so noticed are of notorious character and serve only to "fill in the gaps" which might exist in the evidentiary showing made by the examiner to support a particular ground of rejection. In re Zurko, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001); Ahlert, 424 F.2d at 1092, 165 USPQ at 421.

It would not be appropriate for the examiner to take Official Notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. For example, assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. In re Ahlert, 424 F.2d at 1091, 165 USPQ at 420-21. It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. Zurko, 258 F.3d at 1385, 59 USPQ2d at 1697 . . . [A]n assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. Id. at 1385, 59 USPQ2d at 1697 . . . The board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies.

Ordinarily, there must be some form of evidence in the record to support an assertion of common knowledge. See Lee, 277 F.3d at 1344-45, 61 USPQ2d at 1434-35 (Fed. Cir. 2002); Zurko, 258 F.3d at 1386, 59 USPQ2d at 1697 . . . In certain older cases, Official Notice has been taken of a fact that is asserted to be "common knowledge" without specific reliance on documentary evidence where the fact noticed was readily verifiable, such as when other references of record supported the noticed fact, or where there was nothing of record to contradict it. . . . The applicant should be presented with the explicit basis on which the examiner regards the matter as subject to Official Notice and be allowed to challenge the assertion in the next reply after the Office action in which the common knowledge statement was made. Any rejection based on assertions that a fact is well-known or is common knowledge in the art without documentary evidence to support the examiner's conclusion should be judiciously applied.

See MPEP §2144.03

The Examiner has taken Official Notice in the final rejection, which the Board has cautioned against in all but rare circumstances where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known. The Examiner has not presented the explicit basis on which the examiner regards the matter as subject to Official Notice and Applicants have not been allowed to challenge the assertion in the next reply after the Office action in which the common knowledge statement was made, which is clear error under the requirements set forth in MPEP 2144.03.

Further, the Examiner has not provided some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness, or for combining Official Notice with Robyn that wound render the resultant combination obvious.

Claim 1 recites a method for leasing a motor vehicle to a credit challenged customer comprising the steps of: selecting a vehicle based on predetermined financial criteria; approving a lease for the vehicle; funding the lease, wherein funding the lease comprises: establishing a leasing company by an auto dealership; acquiring a line of credit from a lending institution by the leasing company for providing a pool of funds for a plurality of leases, the line of credit including an interest based upon a plurality of credit parameters associated with the dealership; selecting and installing into the vehicle a device configured to render the vehicle operable for a predetermined period of time, the vehicle otherwise being inoperable with the installed device; activating the device to render the vehicle operable for a predetermined lease period after receiving a predetermined lease payment from the customer for the predetermined lease period; and delivering the vehicle to the customer.

Further, claim 19 recites a means for obtaining a funded lease for the vehicle, the means for obtaining being configured to compute at least one predetermined financial parameter in electronic form based on at least one financial parameter.

The Examiner has provided the Robyn reference, which teaches a devise to render the vehicle inoperable, the vehicle otherwise being inoperable with the installed device; and a means or code for activating the device upon payment of a lease amount. However, Robyn does not

disclose a means for obtaining a funded lease that is configured to compute at least one predetermined financial parameter in electronic form based on at least one financial parameter associated with the consumer. Assuming *arguendo* that the facts that the Examiner sets forth under Official Notice are common knowledge, a point which Applicants do not concede, the Examiner has articulated no teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

Several of the features recited by Applicant in claim 1 are not taught or suggested by Robyn. For example, Robyn does not teach or suggest the following:

> "funding the lease, wherein funding the lease comprises:
>
> establishing a leasing company by an auto dealership;
>
> acquiring a line of credit from a lending institution by the leasing company for providing a pool of funds for a plurality of leases, the line of credit including an interest based upon a credit parameters associated with the dealership ;"

Robyn, as described above, sets forth minimal information on leasing transactions between an auto dealership and poor or credit challenged people. Applicants disagree with the Examiner's assertion that several of the claimed features are taught or suggested by Robyn. For example, the examiner stated that in paragraph 1, Robyn teaches approving a lease for the vehicle; funding the lease; selecting and installing into the vehicle a device capable upon activation of rendering the vehicle operable for a predetermined period of time, the vehicle otherwise being inoperable with the installed device; activating the device to render the vehicle operable for a predetermined lease period after receiving a predetermined lease payment from the customer for the predetermined lease period; (and) delivering the vehicle to the customer; that the step of approving the lease is performed electronically; and tracking predetermined lease information by a microprocessor.

Paragraph 1 of Robyn is reproduced below for convenience:

ugraph [1] Abstract (Summary)
The dealer, Mel Farr, the former ©Detroit Lions football player, leases the cars to anyone who can come up with at least $50 a week. The catch is that a payment is due every Friday and customers must pay up weekly to get a code they must punch into a device attached to the dashboard. Otherwise, the car stays parked.

Upon review, it is apparent that the paragraph of Robyn does not teach all that the Examiner contends. In fact there is nowhere to be found in Paragraph 1 any reference to funding or approving a lease, delivering a vehicle to the customer, approving the lease electronically, and tracking predetermined lease information by a microprocessor. It is apparent that the Examiner is assuming facts that are not taught or suggested in the reference.

The other citations taken from Robyn are equally deficient of the teachings that the Examiner suggests, such as paragraphs 4 and 5:

[4] A car dealer here is making a big push into leasing used cars to poor people with no credit or bad credit. But the deals come with streetwise terms: miss a payment and the car won't start.

[5] The dealer, Mel Farr, the former ©Detroit Lions football player, leases the cars to anyone who can come up with at least $50 a week. The catch is that a payment is due every Friday and customers must pay up weekly to get a code they must punch into a device attached to the dashboard. Otherwise, the car stays parked.

Again, Robyn provides only anecdotal information about a leasing program between an auto dealer and his customers, but Robyn fails to provide each and every element of claim 1, as amended. Nor does Robyn provide the limitations provided in the claim. As amended, claim 1 clarifies certain relationships that may not have been clear to the Examiner. That is, that funding the lease is multi-step process in which the dealership, through a leasing company established by

the dealership, acquires a line of credit through which it funds a plurality of leases, the line of credit including an interest based upon a plurality of credit parameters associated with the dealership. Robyn does not teach or suggest any of the back office systems and methods that are involved in the financing of leases, and merely recounts a story of one auto dealer that uses a dashboard mounted device for entering an activation code, in response weekly lease payments made by credit challenged customers.

Therefore, applicants respectfully submit that claims 1 and 19 are not rendered obvious by Robyn in view of Official Notice, and respectfully requests reconsideration and allowance of claims 1 and 19, as amended. Further, claims 8 and 10-12 are allowable as depending from what is believed to be an allowable independent claim. Claim 18 is allowable as a product-by-process claim that is completely defined by practicing the method of claim 1, as amended. And finally, claim 19 is allowable for the reasons set forth above.

Ground 2. Whether claims 3-7, 9 and 20 are unpatentable under 35 U.S.C. 103(a) over Robyn (PTO 892 Form U) in view of Official Notice.

Claims 3-7, 9 and 20

Dependent claims 3-7, 9 and 20 are believed to be distinguishable from and non-obvious over Robyn and Official Notice.

First, for the reasons set forth above with respect to Ground 1, Applicants believe claim 1 to be an allowable independent claim. Claims 3-7 and 9 would therefore be allowable as depending from an allowable independent claim. Applicants further assert that the Examiner's attempt to reject claims 3-7, 9 and 20 in view of Official Notice of the business of funding a lease for a motor vehicle is clearly improper. As clearly stated in § 2144.03 of the MPEP:

> It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in the record, as the principal evidence upon which a rejection was based. Zurko, 258 F.3d at 1385, 59 USPQ2d at 1697 ("[T]he Board cannot simply reach conclusions based on its own understanding or experience-or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.").

> While the court explained that, "as an administrative tribunal the Board clearly has expertise in the subject matter over which it exercises jurisdiction," it made clear that such "expertise may provide sufficient support for conclusions [only] as to peripheral issues." Id. at 1385-86, 59 USPQ2d at 1697. As the court held in Zurko, an assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support. Id. at 1385, 59 USPQ2d at 1697.

For the reasons set forth above under Ground 1, claim 1 is not rendered obvious by Robyn in view of Official Notice, thus rendering Official Notice as the Examiner's sole basis for rejections of claims 3-7, 9 and 20. Thus, since the Examiner's reliance on Official Notice is solely as the basis for the rejection under 35 U.S.C. §103(a) is clearly improper, and claims 3-7, 9 and 20 are therefore allowable.

Appellant respectfully submits that Robyn and Official Notice do not render obvious Appellant's invention as recited in claims 3-7, 9 and 20.

Ground 3. Whether claims 21-22 and 25-26 are unpatentable under 35 U.S.C. 103(a) over Robyn in view of Official Notice.

Claims 21-22 and 25-26

Dependent claims 21-22 and 25-26 are believed to be distinguishable from Robyn and Official Notice.

Claims 21-22 and 25-26 depend directly or indirectly from claim 19, which Applicants believe to be allowable for the reasons set forth above with respect to Ground 1. Further, the Examiner's reliance on *In re Gulack* is misplaced. Specifically, the Examiner stated that non-functional descriptive material is given little patentable weight. However, MPEP §2112.01 provides:

> Where the only difference between a prior art product and a claimed product is printed matter that is not functionally related to the product, the content of the printed matter will not distinguish the claimed product from the prior art. In re Ngai, **>367 F.3d 1336, 1339, 70 USPQ2d 1862, 1864 (Fed. Cir. 2004)< (Claim at issue was a kit requiring instructions and a buffer agent. The Federal Circuit held that the claim was anticipated by a prior art reference that taught a

> kit that included instructions and a buffer agent, even though the content of the instructions differed.). See also In re Gulack, 703 F.2d 1381, 1385-86, 217 USPQ 401, 404 (Fed. Cir. 1983)("Where the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability...[T]he critical question is whether there exists any new and unobvious functional relationship between the printed matter and the substrate.").

The Examiner is improperly equating *printed matter* not functionally related to the device with the *descriptive matter* set forth in claims 21, 22, 25 and 26, which claims set forth more than simply printed matter, and Applicants submit that patentable weight may be given to each of claims 21-22 and 25-26. E.g., claim 21 sets forth a "means for obtaining" and specifies system parameters that may be applied in obtaining funding of the lease. Claim 22, as amended includes a device with a microprocessor connected to the vehicle's ignition system; claim 25, as amended, includes one embodiment of an activating means including a microprocessor for receiving activation codes and rendering the vehicle operable. These are clearly functional limitations that involve more than mere printed matter such as instructions included in a kit.

Appellant respectfully submits that Robyn and Official Notice do not render obvious Appellant's invention as recited in claims 21-22 and 25-26 for the reasons stated above.

Ground 4. Whether claims 13-16 are unpatentable under 35 U.S.C. 103(a) over Robyn (PTO 892 Form U) in view of Official Notice, and further in view of Simon *et al.* (U.S. Patent No. 6,195,648).

Claims 13-16

Dependent claims 13-16 are believed to be distinguishable from Robyn, Official Notice, and Simon *et al.* (U.S. Patent No. 6,195,648), hereinafter referred to as "Simon".

Simon, as understood, discloses a critical system interruption circuit in communication with a logic processing unit that operates to disable and enable equipment in response to loan payments being timely made. When a user makes a payment on an outstanding loan, usually a loan related to the equipment, a logic processor is notified of the action. The logic processor drives a switch coupled to a critical system interruption means to enable or disable the equipment

in accordance with payment receipt. Also, the method includes the steps of: computing a payment due deadline, generating a reference code which corresponds to the deadline, receiving a code at a logic processing unit, comparing the received code to the reference code, disabling a critical system if a correct code is not received before a present time exceeds a payment due deadline; enabling a critical system on receipt of correct code; and computing subsequent payment due deadline and generating a reference code which corresponds to the subsequent deadline.

Further, Simon does not cure the defects of Robyn combined with Official Notice. Simon does not disclose at least selecting a vehicle based on predetermined financial criteria; approving a lease for the vehicle; funding the lease; wherein funding the lease comprises: establishing a leasing company by an auto dealership; acquiring a line of credit from a lending institution by the leasing company for providing a pool of funds for a plurality of leases, the line of credit including an interest based upon a plurality of credit parameters associated with the dealership; and delivering the vehicle to the customer.

For the reasons set forth above with respect to claim 1, under Ground 1, Applicants believe claim 1 to be an allowable independent claim. Claims 13-16 depend from claim 1, and would therefore be allowable as depending directly or indirectly from what is believed to be an allowable independent claim.

Appellant respectfully submits that Robyn, Official Notice and Simon do not render obvious Appellant's invention for the reasons stated above.

Ground 5. Whether claims 17 and 23 are unpatentable under 35 U.S.C. 103(a) over Robyn (PTO 892 Form U) in view of Official Notice, and further in view of Donald Streit *et al.* (European Patent No. 762363 A1).

Claims 17 and 23

Dependent claims 17- and 23 are believed to be distinguishable from Robyn, Official Notice, and Streit *et al.* (European Patent No. 762363 A1) hereinafter referred to as "Streit".

Streit, as understood, discloses selecting and installing in the vehicle a device for tracking the vehicle selected from a global positioning system and RFID. An inertial measurement unit includes one or more gyros and one or more accelerometers for providing the inertial state characteristics of the vehicle. The vehicle tracking system additionally includes an inertial converter coupled with the inertial measurement unit for obtaining vehicle state information from the inertial state characteristics.

Streit does not cure the defects of Robyn combined with Official Notice. Streit does not disclose at least leasing a motor vehicle to a credit challenged customer comprising the steps of: selecting a vehicle based on predetermined financial criteria; approving a lease for the vehicle; funding the lease; wherein funding the lease comprises: establishing a leasing company by an auto dealership; acquiring a line of credit from a lending institution by the leasing company for providing a pool of funds for a plurality of leases, the line of credit including an interest based upon a plurality of credit parameters associated with the dealership; selecting and installing into the vehicle a device configured to render the vehicle operable for a predetermined period of time, the vehicle otherwise being inoperable with the installed device; activating the device to render the vehicle operable for a predetermined lease period after receiving a predetermined lease payment from the customer for the predetermined lease period; and delivering the vehicle to the customer.

Claims 17 and 23 depend from claim 1 and claim 19, respectively. For the reasons set forth above with under Ground 1, claims 1 and 19, as amended, are believed to be allowable. Therefore, claims 17 and 23 would be allowable as depending from what is believed to be an allowable independent claim.

Appellant respectfully submits that Robyn, Official Notice and Streit do not render obvious Appellant's invention for the reasons stated above.

Ground 6. Whether claims 24 and 27 are unpatentable under 35 U.S.C. 103(a) over Robyn (PTO 892 Form U) in view of in view of Official Notice., and further in view of Simon *et al.* (U.S. Patent No. 6,195,648).

Claims 24 and 27

Dependent claims 24 and 27 are believed to be distinguishable from Robyn, Official Notice, and Simon *et al.* (U.S. Patent No. 6,195,648) hereinafter referred to as "Simon".

Claims 24 and 27 depend directly or indirectly from claim 19. For the reasons set forth above with under Ground 1, claim 19 is believed to be allowable. Therefore, claims 24 and 27would be allowable as depending from what is believed to be an allowable independent claim.

Appellant respectfully submits that Robyn, Official Notice and Simon do not render obvious claims 24 and 27, for the reasons stated above.

Ground 7. Whether claim 7 is unpatentable under 35 U.S.C. 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "currently published retail value" in claim 7 is vague and indefinite, it is unclear whether the device has to actually perform upon activation of rendering the vehicle operable for a predetermined period of time, the vehicle otherwise being inoperable with the installed device or not.

Claim 7

Claim 7 recites the method of claim 1 wherein the lease has a maximum net capitalized cost no greater than 120% of a currently published retail value. Applicants submit that currently published retail value – i.e., NADA value. Such reference publications are well known and are used extensively throughout the auto industry for financing and pricing vehicles, and Applicants therefore submit that the term "currently published retail value" is not vague and indefinite. Furthermore, the Examiner fails to state why it is unclear "whether the device has to actually perform upon activation of rendering the vehicle operable for a predetermined period of time, the vehicle otherwise being inoperable with the installed device or not", in relation to the rejection for indefiniteness.

Appellant respectfully submits that claims 7 is not indefinite, for the reasons stated above, and is therefore allowable.

8. – 10. APPENDICES

(8) A Claims Appendix containing a copy of the claims involved in the appeal is attached hereto.

(9) An Evidence Appendix containing a list of any evidence entered by the Examiner that will be relied upon in the appeal is attached hereto.

(10) A Related Proceeding Appendix containing a copy of decisions rendered by the Board or the Courts in any related proceedings is attached hereto.

SUMMARY AND CONCLUSION

In view of the above, Appellant respectfully requests a favorable action on this pending Appeal and withdrawal of the outstanding rejections. As a result of the remarks presented herein, Appellant respectfully submits that claims 1 and 3-27 are not anticipated by nor rendered obvious by the cited references and thus, are in condition for allowance.

The Commissioner is authorized to charge any fees determined to be due to the undersigned's Account No. 50-1059.

Respectfully submitted,
McNees Wallace & Nurick LLC

Dated: 12/4/2008

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8. CLAIMS APPENDIX

Copy of the Claims Involved in the Appeal.

1. A method for leasing a motor vehicle to a credit challenged customer comprising the steps of:

   selecting a vehicle based on predetermined financial criteria;

   approving a lease for the vehicle;

   funding the lease; wherein funding the lease comprises:

   establishing a leasing company by an auto dealership;

   acquiring a line of credit from a lending institution by the leasing company for providing a pool of funds for a plurality of leases, the line of credit including an interest based upon a plurality of credit parameters associated with the dealership ;

   selecting and installing into the vehicle a device configured to render the vehicle operable for a predetermined period of time, the vehicle otherwise being inoperable with the installed device;

   activating the device to render the vehicle operable for a predetermined lease period after receiving a predetermined lease payment from the customer for the predetermined lease period; and

   delivering the vehicle to the customer.

2. [cancelled]

3. The method of claim 1 wherein the value of the line of credit is substantially equal to an amount of business anticipated during a predetermined period, represented by the formula:

   number of deals per month x number of months x average deal value ($).

4. The method of claim 1 wherein the predetermined financial criteria comprises the customer's needs based upon a dollar value per week lease payment the customer can afford.

5. The method of claim 1 wherein the vehicle selected is selected from the group consisting of a current model year vehicle to a 5 model years old vehicle for a 36 month term lease; a 6 model years old vehicle to an 8 model years old vehicle for a 24 month term lease; and a 9 model years old vehicle to a 10 model years old vehicle for a 12 month term lease.
6. The method of claim 1 wherein the vehicle selected is selected from the group consisting of a vehicle with less than about 60,000 miles for a maximum 36 month lease term; a vehicle with about 60,000 miles to about 100,000 miles for a maximum 24 month lease term; and a vehicle with about 100,000 miles to about 130,000 miles for a maximum 12 month lease term.
7. The method of claim 1 wherein the lease has a maximum net capitalized cost no greater than 120% of a currently published retail value.
8. The method of claim 1 wherein the step of approving the lease is performed electronically.
9. The method of claim 1 wherein the step of approving the lease is performed by a reviewer.
10. The method of claim 1 further including the step of tracking predetermined lease information by a microprocessor.
11. The method of claim 1 further including the step of transferring lease information to a third party wherein the third party tracks the lease and issues at least one predetermined lease schedule.
12. The method of claim 1 wherein the device configured to render the vehicle operable for a predetermined period of time comprises a device with a microprocessor connected to the vehicle's ignition system to prevent starting of the vehicle without a predetermined authorization.
13. The method of claim 1 wherein the step of activating the device comprises transferring an authorization code selected from the group consisting of using a keypad, via radio waves and via a cellular telephone.

14. The method of claim 13 wherein the step of activating the device to render the vehicle operable for the predetermined lease period comprises the steps of:

entering into the microprocessor upon delivery of the vehicle to the customer a plurality of predetermined authorization codes, each of the codes upon activation rendering the vehicle operable for the predetermined period;

supplying to the customer the authorization code for a paid predetermined period; and

entering into the microprocessor the authorization code for the paid predetermined period, thereby rendering the vehicle operable for the paid predetermined period.

15. The method of claim 14 wherein the paid predetermined period is a lease payment period.

16. The method of claim 14 wherein the plurality of predetermined authorization codes includes an emergency code for allowing the vehicle to be operated for a period of predetermined short duration in response to an emergency and a reset code for resetting a previously activated emergency code.

17. The method of claim 1 further including the step of selecting and installing in the vehicle a device for tracking the vehicle selected from the group consisting of a Global Positional System device and a Radio Frequency Identification device.

18. The system for leasing a motor vehicle to a credit challenged consumer created by the method of claim 1.

19. A system for leasing a motor vehicle to a credit challenged consumer comprising:

a device configured to render the vehicle operable for a predetermined period of time, the vehicle otherwise being inoperable with the installed device;

means for obtaining a funded lease for the vehicle, the means for obtaining being configured to compute at least one predetermined financial parameter in electronic form based on at least one financial parameter associated with the consumer; and

a means for activating the device upon payment of a predetermined lease amount.

20. The system of claim 19 wherein the funded lease is funded by a leasing company and the means for obtaining a funded lease comprises means for calculating a revolving line of credit substantially equal to an amount of business anticipated during a predetermined period for the leasing company, using the formula:

number of deals per month x number of months x average deal value ($).

21. The system of claim 19, wherein the means for obtaining comprises a microprocessor and the at least one predetermined financial parameter in electronic form is selected from the group consisting of a dollar amount for a revolving line of credit obtained by a leasing company from a lending institution to fund the lease; an interest rate to be paid on the revolving line of credit; insurance coverage appropriate for the funded lease; a vehicle appropriate for a consumer; a lease reviewer for approving, funding and posting the lease; a consumer appropriate for the funded lease; at least one predetermined form and information used by the reviewer; predetermined information used by a vehicle dealership; predetermined information used by the leasing company, predetermined information used by a third party, and combinations thereof, and the at least one predetermined financial parameter is selected from the group consisting of a consumer's weekly income, job history, residential stability, available amount of cash, available trade equity and an amount of equity required to complete a lease transaction.

22. The system of claim 21 wherein the device is configured to render the vehicle operable for a predetermined period of time comprises a device with a microprocessor connected to the vehicle's ignition system to prevent starting of the vehicle without a predetermined authorization.

23. The system of claim 19 further comprise a device for tracking the vehicle selected from the group consisting of a Global Positional System device and a Radio Frequency Identification device.

24. The system of claim 19 wherein the means for activating the device includes transferring an authorization code selected from the group consisting of using a keypad, via radio waves and via a cellular telephone.

25. The system of claim 22 wherein the means for activating the device comprises:

the microprocessor configured to, upon delivery of the vehicle to the customer, receive a plurality of predetermined authorization codes, each of the codes upon activation rendering the vehicle operable for the predetermined period;

wherein one authorization code of the plurality of predetermined authorization codes being supplied to the customer for a paid predetermined period; the authorization code for the paid predetermined period, rendering the vehicle operable for the predetermined period when entered into the microprocessor.

26. The system of claim 25 wherein the predetermined period is selected from the group consisting of weekly, bi-weekly and monthly.

27. The system of claim 25 wherein the plurality of predetermined authorization codes includes an emergency code for allowing the vehicle to be operated for a period of predetermined short

duration in response to an emergency and a reset code for resetting a previously activated emergency code.

Claims 28-31 [cancelled].

9. EVIDENCE APPENDIX

Copies of any Evidence Submitted Pursuant to 37 CFR 1.130, 1.131, or 1.132 or of any Other Evidence Entered by the Examiner and Relied Upon by Appellant in the Appeal.

None.

10. RELATED PROCEEDINGS APPENDIX

Copies of Decisions Rendered by a Court or the Board in any Proceedings Identified Pursuant to 37 CFR 41.37(c)(1)(ii).

None.